

SUBJECT: Compliance With Conflict of Interest Regulations Must be Adhered to When Awarding Contracts or Assisting Households Policy Bulletin #8

EFFECTIVE DATE: June 1, 1997

Any grantee (local unit of government or nonprofit) receiving Office of Community Development (OCD) funds (state or federal) must comply with federal conflict of interest regulations when awarding contracts or assisting households. This policy bulletin addresses the following:

- C General Prohibitions
- C Penalties for Violations Include Repayment and/or Ineligibility
- C Who is Covered
- C Exception for the Preceding Persons
- C Provisions for Owners, Developers, or Sponsors

The conflict of interest guidelines are based on Community Development Block Grant (CDBG) and HOME regulations found in 24 CFR 570.489 (CDBG) and 24 CFR 92.356 (HOME). In addition, these conflict of interest rules must be adhered to when purchasing supplies, equipment, construction, and other related services. [See 24CFR 85.36 and 24 CFR 85.42 (the Common Rule).]

General Prohibitions

None of the employees, officers, agents, or subrecipients of OCD funds shall participate in the selection, award, or administration of a contract involving OCD funds if a conflict of interest, either real or apparent, would be involved.

None of the employees, officers, agents, or subrecipients of OCD funds shall accept gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to a subagreement.

Penalties for Violations Include Repayment and/or Ineligibility

The penalty for violations of these provisions could include repayment of OCD funds and/or ineligibility for future participation. The penalty, sanction, or other disciplinary action will be determined by MSHDA.

Who is Covered

Any person who is an employee, agent, consultant, officer, or elected official or appointed official of the grantee, State recipient, or subrecipient are covered by the Conflict of Interest provisions if they currently or in the past:

- C Have any functions or responsibilities regarding OCD-assisted activities; or
- C Are in a position to participate in a decision-making process, or gain inside information with regard to these activities; or

- C Have a financial interest in any contract, subcontract, or agreement with respect to an OCD-assisted project or the proceeds of the contract, subcontract, or agreement, either for themselves or for those with whom they have family or business ties.

This prohibition is in effect during their tenure and for one year thereafter.

Exception For the Preceding Persons

Upon written request to MSHDA, employees of the grantee receiving OCD funds, their agents, consultants, officers, elected officials, or appointed officials and their immediate families may be granted an exception to these provisions on a case-by-case basis.

Requests for an Exception

The designated signatory of the Grant Agreement must submit to MSHDA in writing:

- C The name, title, and classification of the person, and a brief description of the person's position as it relates to the OCD-assisted project or contract award;
- C A disclosure of the nature of the conflict of interest and proof that the disclosure has been made public; and,
- C A legal opinion from the grantee, or if the recipient of OCD funds is not a unit of local government, the attorney representing the recipient, stating that there would be no violation of state or local law if the exception were granted.

Factors to be Considered for Exception

In determining whether to grant the requested exception, MSHDA will consider the following factors as they are relevant to the situation:

1. Whether the exception would provide a significant cost benefit or an essential degree of expertise to the program or project which would otherwise not be available;
2. Whether an opportunity was provided for open competitive bidding or negotiation;
3. Whether the person is a member of a group or class of low and moderate income persons intended to be the beneficiaries of the OCD-assisted activity, and the exception would permit the person to receive generally the same interests or benefits as are being made available or provided to the group or class;
4. Whether the affected person has withdrawn from his or her functions or responsibilities, or the decision making process with respect to the specific assisted activity in question;
5. Whether the interest or benefit was present before the affected person was in their position as an employee, agent, consultant, officer, or elected official or appointed official of the grantee, State Recipient, or subrecipient of OCD funds;

6. Whether undue hardship would result either to the State or the unit of general local government or the person affected when weighed against the public interest served by avoiding the prohibited conflict; and
7. Any other relevant considerations.

Provisions for Owners, Developers, or Sponsors

There are additional Conflict of Interest provisions that cover nonprofit or for-profit owners, developers, or sponsors of OCD-assisted projects.

- C No owners, developers, or sponsors of an OCD-assisted project (or officer, employee, agent or consultant of the owner, developer, sponsor) whether private, for-profit, or nonprofit may occupy an OCD-assisted unit in a project.
- C This provision does not apply to an owner-occupant of a single-family home or to an employee or agent of the owner or developer of a rental housing project who occupies an OCD-assisted unit in a project as a project manager or maintenance worker.

Request for Exceptions

Upon written request from a housing owner, developer, or sponsor, MSHDA may grant an exception to the preceding provisions on a case-by-case basis when it determines that the exception will serve to further MSHDA's purposes and the effective and efficient administration of the owner's or developer's OCD-assisted project.

Factors to be Considered for Exception

1. Whether the person is a member of a group or class of low and moderate income persons intended to be the beneficiaries of the OCD-assisted activity, and the exception would permit the person to receive generally the same interests or benefits as are being made available or provided to the group or class;
2. Whether the affected person has withdrawn from his or her functions or responsibilities, or the decision making process with respect to the specific assisted activity in question;
3. Whether the provisions cited in 92.253 of the HOME regulations regarding tenant protections (prohibited lease terms, termination of tenancy, and tenant selection) are being observed;
4. Whether the required affirmative marketing requirements are being observed and followed; and
5. Any other factor relevant to the determination, including the timing of the requested exception.

OCD's Conflict of Interest policy applies to all grant awards (CDBG, HOME, and other MSHDA funds). Any questions regarding this policy bulletin should be directed to your Community Development (CD) Specialist or CD staff at (517) 373-1974.